

Vinson & Elkins LLP

Patrick D. Traylor
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October 30, 2020

Via Email (mcguire.karen@epa.gov)

Ms. Karen McGuire
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 1
5 Post Office Square, Mail Code 04-5
Boston, MA 02109-7341

Re: Algonquin Weymouth Compressor Station—
Request for Force Majeure Extension of NSPS Performance Test and Initial Fugitive
Emissions Survey

Dear Ms. McGuire:

On behalf of our client, Algonquin Gas Transmission, LLC (“Algonquin”), we write to request a force majeure-based extension of time under 40 C.F.R. § 60.8(a) to conduct the initial performance test under 40 C.F.R. part 60, subpart KKKK at Algonquin’s Weymouth Compressor Station (“the Station”).

The Station achieved its maximum production rate on September 24, 2020, with the Subpart KKKK initial performance test due no later than sixty days later, or November 23, 2020.¹ However, as the result of certain force majeure events, the Station is currently shut-in under the terms of an October 1, 2020, Corrective Action Order (“CAO”)² issued by the U.S. Pipeline and Hazardous Materials Safety Administration (“PHMSA”). The Station may only resume operation after PHMSA has approved a restart plan, which is still in development. Algonquin therefore requests a force majeure-based extension of time under 40 C.F.R. § 60.8(a) in which to conduct the initial performance test to sixty days after the Station restarts. The bases for our request are set forth in more detail below.

¹ See 40 C.F.R. § 60.4400(a) (referencing 40 C.F.R. § 60.8).

² *In re Algonquin Gas Transmission, LLC*, Corrective Action Order, CPF No. 1-2020-014-CAO (PHMSA, Oct. 1, 2020) (Attach. A).

I. Background

The Massachusetts Department of Environmental Protection (“MassDEP”) issued a plan approval to Algonquin on January 11, 2019, to construct a new compressor station in Weymouth, MA. The Station consists of a Solar Taurus 60-7802 natural gas-fired combustion turbine (“the turbine”) with a maximum energy input rating of 74.91 MMBtu/hr HHV, a natural gas-fired Waukesha VGF24GL emergency spark ignition engine generator set with a rated capacity of 585 brake horsepower, and fugitive emission sources at the compressor station. The turbine is subject to NSPS Subpart KKKK. The earliest date on which the turbine achieved its maximum production rate was September 24, 2020. Under NSPS Subparts KKKK, the deadline for the initial performance test is November 23, 2020.³

On September 11, 2020, the Station experienced an O-ring gasket failure on a filter separator vessel during the Station’s commissioning activities. The failure triggered the manual operation of the emergency shutdown system, resulting in a reported total of 169 MSCF gas released—13 MSCF at ground level and 156 MSCF through the Source Control Silencer. On September 30, 2020, at approximately 10:20 a.m. (EDT), the Station experienced an unplanned activation of the emergency shutdown system, resulting in the release through the source control silencer of approximately 195 MSCF of natural gas to the atmosphere. There were no injuries or fatalities associated with either event.

As a result of the events, PHMSA issued the CAO on October 1, 2020. Under the terms of the CAO, the Station is shut in until authorized to restart by PHMSA. *See* CAO Condition 1. Algonquin must submit to PHMSA a root cause failure analysis for these two events no later than December 29, 2020, *see id.* Condition 6. Algonquin must also submit a restart plan for approval by PHMSA prior to restarting the Station. *See id.* Condition 2. The restart plan must provide for a review of construction and commissioning records, and must address any findings that require remedial measures to be implemented prior to restart. *See id.* Condition 2(f). As a result of the emergency shutdown events and the CAO, Algonquin published a force majeure notice on October 1, 2020,⁴ with a notice end date of December 20, 2020.

II. The events constituted force majeure events for which a section 60.8(a) extension is warranted

Section 60.8(a) allows for a discretionary force majeure-based extension of NSPS performance test deadlines upon a showing of the following: (1) notification in writing as soon as practicable following the date the owner or operator first knew that the event may cause a delay in testing; (2) providing a written description of the force majeure event; (3) providing a rationale for attributing the delay in testing to the force majeure event; (4) providing a description of the measures

³ *See supra* n.1.

⁴ *See* Attach. B.

taken to minimize the delay; and (5) providing a date by which the owner or operator proposes to conduct the performance test. *See* 40 C.F.R. § 60.8(a)(1)–(2). In addition, Sections 60.2 and 60.8(a) identify equipment failures as a non-exclusive example of a force majeure event. *See* 40 C.F.R. § 60.2 (definition of “force majeure”). *See also* 72 Fed. Reg. 27,437, 27,438 (2007). And at least four applicability determinations have cited equipment failures as qualifying force majeure events.⁵

A. Algonquin’s notification is timely

Algonquin has been working diligently to comply with the conditions for restart set out in the CAO. While it is possible that restart will be authorized prior to November 23, 2020, there remains the potential for additional delay in scheduling the performance test for the turbine with MassDEP and EPA. These matters became clearer within the past week, and so Algonquin’s written notification to the EPA is timely.

B. The force majeure events

The delay in testing has been caused by three discrete, though interrelated, events: the two equipment failures and resulting emergency shutdown events at the Station, and the resultant CAO issued by PHMSA. The causes of the two events are currently under investigation, and Algonquin has retained an independent third party to facilitate this work as required by the CAO. As a result of those two events, PHMSA issued the CAO that prohibits operation of the Station. Standing alone, the events themselves qualify as force majeure events, but the CAO prohibiting operation is indisputably a force majeure event that will delay the performance test.

C. The delay in testing is attributable to the force majeure events

The two events and the CAO have caused Algonquin to delay the scheduled completion of the initial performance test. Consequently, the two events and the CAO—taken together—have indisputably delayed the restart of the Station and the ability of Algonquin to conduct the required performance test. Without a return to operations, the initial performance test on the turbine cannot be conducted.

⁵ *See, e.g.*, Letter from Wenona Wilson, U.S. Env’tl. Prot. Agency Region 10, to Buki Wright, Aurora Energy, LLC, ADI Z150001 (Jan. 15, 2015) (Attach. C); Letter from Wenona Wilson, U.S. Env’tl. Prot. Agency Region 10, to Buki Wright, Aurora Energy, LLC, ADI M140012 (Sep. 26, 2014) (Attach. D); Letter from Kate Kelly, U.S. Env’tl. Prot. Agency Region 10, to Yoshifumi Nagaura, Nippon Paper Indus. USA Co., LTD, ADI M140007 (Apr. 25, 2014) (Attach. E); Letter from George Czerniak, U.S. Env’tl. Prot. Agency Region 5, to Douglas Fitzgerald, Indianapolis Casting Corp., ADI M080005 (Dec. 6, 2007) (Attach. F). These letters address requests for force majeure extensions under the identical provisions of the NSPS and NESHAP programs.

D. Efforts to minimize the delay

Algonquin is working diligently to obtain approval to restart the Station and thereafter to conduct the required performance test. To that end, Algonquin has been engaged in active and ongoing communications with PHMSA concerning the development of the root cause analysis and the restart plan. Algonquin will continue to work with PHMSA on developing a timeline for bringing the facility into service in full compliance with all applicable federal and state laws.

E. New deadline for performance testing

Given that the date of restart is under the control of PHMSA, Algonquin cannot schedule the initial performance test for the turbine until it is restarted. Moreover, arranging for the performance test may take additional time due to the ongoing COVID-19 pandemic. Because Algonquin does not know the precise date on which the Station will be restarted and how long it will take to schedule the test, it is appropriate to set the extended performance date deadline at sixty days after Station restart.

* * *

We thank you in advance for your attention to this request. If you have any questions, please do not hesitate to contact me by email at ptraylor@velaw.com or by telephone at (202) 669-3896.

Sincerely,

Vinson & Elkins LLP



Patrick D. Traylor
Partner

cc: Tom Olivier, Region 1 Enforcement and Compliance Assurance Division
Seth Pickering Deputy Director Southeast Region Office, MassDEP
Barry Goodrich, Algonquin Gas Transmission, LLC

Attachments (6)

ATTACHMENT A



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

October 1, 2020

VIA ELECTRONIC MAIL TO: bill.yardley@enbridge.com

Mr. William T. Yardley
President, Gas Transmission and Midstream
Enbridge, Inc.
5400 Westheimer Court
Houston, Texas 77056

CPF No. 1-2020-014-CAO

Dear Mr. Yardley:

Enclosed please find a Corrective Action Order (CAO) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), in the above-referenced case. It requires Algonquin Gas Transmission, LLC, a subsidiary of Enbridge Inc., to take certain corrective actions with respect to Algonquin's Weymouth Compressor Station in Weymouth, Massachusetts.

Service of the CAO by electronic mail is deemed complete upon transmission and acknowledgement of receipt, or as otherwise provided under 49 C.F.R. § 190.5. The terms and conditions of this Order are effective upon completion of service.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure: CAO

cc: Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, OPS
Mr. Robert Burrough, Director, Eastern Region, OPS
Ms. Michele Harradence, SVP & Chief Operating Officer, Gas Transmission and
Midstream, michele.harradence@enbridge.com
Mr. Nathan Atanu, Manager, Operational Compliance, Algonquin Gas Transmission, LLC,
nathan.atanu@enbridge.com

CONFIRMATION OF RECEIPT REQUESTED

)	
In the Matter of)	
)	
Algonquin Gas Transmission, LLC,)	CPF No. 1-2020-014-CAO
a subsidiary of Enbridge, Inc.,)	
)	
Respondent.)	
)	

¹ Enbridge, Inc. website, *National Gas Transmission and Midstream*, available at <https://www.enbridge.com/About-Us/Natural-Gas-Transmission-and-Midstream.aspx> (last accessed September 30, 2020).

meter station in Connecticut, modifications to various metering stations spread across several states, installation of four new compressor units at existing facilities, and a new compressor station in Weymouth, Massachusetts. When completed, the Project will provide an additional 132,700 dekatherms of capacity on the AGT pipeline system and the Maritimes & Northeast pipeline system.

- Weymouth, Massachusetts, is a heavily populated suburb outside of Boston, Massachusetts. The Station is in a high consequence area, and is located near Fore River Bridge, a heavily trafficked commuter road.
- The Station has a station design pressure of 1440 pounds per square inch gauge (psig).
- The Station experienced a gasket failure that triggered the manual activation of its emergency shutdown system, as well as an unplanned emergency shutdown due to unknown reasons, less than three weeks apart.
- There were no injuries or fatalities associated with the Incidents; however, the release of large quantities of pressurized natural gas in a heavily populated area carries a substantial risk of fire, explosion, and personal injury or death and releases harmful methane into the environment.
- On September 30, 2020, the inlet pressure at the Station was 683 psig; the discharge pressure at the time of the emergency shutdown was 707 psig.
- AGT is performing a root cause failure analysis on the O-ring gasket failure that caused Incident 1.
- The reason for Incident 2 is unknown and under investigation.
- The Station is currently shut-in.

Determination of Necessity for Corrective Action Order and Right to Hearing:

Section 60112 of title 49, United States Code, authorizes PHMSA to determine that a pipeline facility is or would be hazardous to life, property, or the environment and, if there is a likelihood of serious harm, to expeditiously order the operator of the facility to take necessary corrective action, including suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action. An order issued expeditiously must provide an opportunity for a hearing as soon as practicable after the order is issued.

In deciding whether to issue an order, PHMSA must consider the following, if relevant: (1) the characteristics of the pipe and other equipment used in the pipeline facility, including the age, manufacture, physical properties, and method of manufacturing, constructing, or assembling the equipment; (2) the nature of the material the pipeline facility transports, the corrosive and

deteriorative qualities of the material, the sequence in which the material are transported, and the pressure required for transporting the material; (3) the aspects of the area in which the pipeline facility is located, including climatic and geologic conditions and soil characteristics; (4) the proximity of the area in which the hazardous liquid pipeline facility is located to environmentally sensitive areas; (5) the population density and population and growth patterns of the area in which the pipeline facility is located; (6) any recommendation of the National Transportation Safety Board made under another law; and (7) any other factors PHMSA may consider appropriate.

After evaluating the foregoing preliminary findings of fact, and having considered that the Station had an O-ring gasket failure that triggered the manual operation of its emergency shutdown system and an unplanned emergency shutdown for unknown reasons within the past three weeks; the uncertainties as to the cause of Incident 2; and the Station's location in a High Consequence Area, and proximity to populated areas and highly-trafficked public roads, I find that continued operation of the Station without corrective measures is or would be hazardous to life, property, or the environment, and that failure to issue this Order expeditiously would result in the likelihood of serious harm.

Accordingly, this Corrective Action Order mandating immediate corrective action is issued without prior notice and opportunity for a hearing. The terms and conditions of this Order are effective upon receipt.

Within 10 days of receipt of this Order, Respondent may request a hearing, to be held as soon as practicable, by notifying the Associate Administrator for Pipeline Safety in writing, with a copy to the Director, Southwest Region, PHMSA (Director). If a hearing is requested, it will be held in accordance with 49 C.F.R. § 190.211.

After receiving and analyzing additional data in the course of this investigation, PHMSA may identify other corrective measures that need to be taken. Respondent will be notified of any additional measures required and, if appropriate, PHMSA will consider amending or withdrawing this Order, if warranted by new supporting information. To the extent consistent with safety, Respondent will be afforded notice and an opportunity for a hearing prior to the imposition of any additional corrective measures.

Required Corrective Actions:

Definitions:

Affected Pipeline – The Weymouth Compressor Station, including incoming pipeline, I-10, back to first upstream mainline valve.

Isolated Segment – Means the Weymouth Compressor Station, from inlet valves to outlet valves.

Director – Means the Director, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, Eastern Region. The Director's address is 840 Bear Tavern Road, Suite 300, West Trenton, NJ 08626.

Pursuant to 49 U.S.C. 60112, I hereby order AGT to immediately take the following corrective actions for the Affected Pipeline and Isolated Segment:

1. ***Shutdown of the Isolated Segment.*** The Isolated Segment is currently shut-in and not in operation. AGT must not operate the Isolated Segment until authorized to do so by the Director.
2. ***Restart Plan.*** Prior to resuming operation of the Isolated Segment, AGT must develop and submit a written Restart Plan to the Director for approval.
 - a. The Director may approve the Restart Plan incrementally without approving the entire plan but the Isolated Segment cannot resume operation until the Restart Plan is approved in its entirety.
 - b. Once approved by the Director, the Restart Plan will be incorporated by reference into this Order.
 - c. The Restart Plan must provide for adequate patrolling of the Isolated Segment during the restart process and must include incremental pressure increases during start-up, with each increment to be held for at least two hours.
 - d. The Restart Plan must include sufficient surveillance of the Isolated Segment during each pressure increment to ensure that no leaks are present when operation of the line resumes.
 - e. The Restart Plan must specify a day-light restart and include advance communications with local emergency response officials.
 - f. The Restart Plan must provide for a review of the Isolated Segment for conditions similar to those that caused the Incidents, including a review of construction and commissioning records. AGT must address any findings that require remedial measures to be implemented prior to restart.
 - g. The Restart Plan must also include documentation of the completion of all mandated actions, and a management of change plan to ensure that all procedural modifications are incorporated into AGT's operations and maintenance procedures manual.
 - h. Prior to restart, AGT must submit to the Director a contingency plan to operate and monitor the Isolated Segment during flooding conditions, including enhanced patrolling and surveillance.
3. ***Return to Service.*** After the Director approves the Restart Plan, AGT may return the Isolated Segment to service but the operating pressure must not exceed eighty percent (80%) of the actual operating pressure in effect immediately prior to Incident 2, in accordance with Item 2 above.

4. ***Removal of Pressure Restriction.*** The Director may allow the removal or modification of the pressure restriction upon a written request from AGT demonstrating that restoring the pipeline to its pre-Incident 2 operating pressure is justified based on a reliable engineering analysis showing that the pressure increase is safe, considering all known defects, anomalies, and operating parameters of the pipeline.

The Director may allow the removal or modification of the pressure restriction upon a written request from AGT demonstrating that restoring the Affected Segment to its pre-Incident 2 operating pressure is justified, based on a reliable engineering analysis showing that the pressure increase is safe, considering all known defects, anomalies, and operating parameters of the pipeline.

5. ***Temporary Removal of Pressure Restriction.*** The Director may allow the temporary removal or modification of the pressure restrictions upon a written request from AGT demonstrating that temporary mitigative and preventive measures are being implemented prior to and during the temporary removal or modification of the pressure restriction. The Director's determination will be based on the known or suspected cause of Incident 2 and the provision of evidence that preventive and mitigative actions taken by the operator provide for the safe operation of the Affected Segment during the temporary removal or modification of the pressure restriction. Appeals to determinations of the Director in this regard will be decided by the Associate Administrator for Pipeline Safety.
6. ***Root Cause Failure Analysis.*** Within 90 days following receipt of this Order, complete a root cause failure analysis (RCFA) and submit a final report of this RCFA to the Director. The RCFA must be supplemented or facilitated by an independent third-party acceptable to the Director and must document the decision-making process and all factors contributing to Incident 2. The final report must include findings and any lessons learned and whether the findings and any lessons learned are applicable to other locations within AGT's pipeline system.

Other Requirements:

7. ***Approvals.*** With respect to each submission that under this Order requires the approval of the Director, the Director may: (a) approve, in whole or part, the submission; (b) approve the submission on specified conditions; (c) modify the submission to cure any deficiencies; (d) disapprove in whole or in part, the submission, directing that Respondent modify the submission, or (e) any combination of the above. In the event of approval, approval upon conditions, or modification by the Director, Respondent shall proceed to take all action required by the submission as approved or modified by the Director. If the Director disapproves all or any portion of the submission, Respondent must correct all deficiencies within the time specified by the Director, and resubmit it for approval.
8. ***Extensions of Time.*** The Director may grant an extension of time for compliance with any of the terms of this Order upon a written request timely submitted demonstrating good cause for an extension.
9. ***Reporting.*** Submit quarterly reports to the Director that: (1) include all available data and results of the testing and evaluations required by this Order; and (2) describe the progress

of the repairs or other remedial actions being undertaken. The first quarterly report is due on January 4, 2021. The Director may change the interval for the submission of these reports.

10. ***Documentation of the Costs.*** It is requested but not required that Respondent maintain documentation of the costs associated with implementation of this Corrective Action Order. Include in each monthly report submitted, the to-date total costs associated with: (1) preparation and revision of procedures, studies and analyses; (2) physical changes to pipeline infrastructure, including repairs, replacements and other modifications; and (3) environmental remediation, if applicable.

Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

In your correspondence on this matter, please refer to “CPF No. 1-2020-014-CAO” and for each document you submit, please provide a copy in electronic format whenever possible. The actions required by this Order are in addition to and do not waive any requirements that apply to Respondent’s pipeline system under 49 C.F.R. Parts 190 through 199, under any other order issued to Respondent under authority of 49 U.S.C. Chapter 601, or under any other provision of Federal or State law.

Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator shall be final.

Failure to comply with this Order may result in the assessment of civil penalties and in referral to the Attorney General for appropriate relief in United States District Court pursuant to 49 U.S.C. § 60120.

The terms and conditions of this Order are effective upon service in accordance with 49 C.F.R. § 190.5.



October 1, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

ATTACHMENT B

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TSP: 006951446
TSP Name: Algonquin Gas Transmission, LLC
Critical Notice Description: Critical notice
Notice Effective Date: 10/01/2020
Notice Effective Time: 10:29:05 AM
Notice End Date: 12/30/2020
Notice End Time: 10:29:05 AM
Notice Identifier: 101243
Notice Status Description: Initiate
Notice Type: Force Majeure
Posting Date: 10/01/2020
Posting Time: 10:29:05 AM
Prior Notice Identifier:
Required Response
Indicator Description: No response required
Response Date:
Response Time:
Subject: Weymouth Force Majeure

Notice Text:

Algonquin Gas Transmission (AGT) hereby declares a Force Majeure in accordance with Section 16 of the General Terms and Conditions of its FERC Gas Tariff. . While efforts to enable full capacity at the station are underway, the estimated time of restoration is unclear at this time.

AGT will post updates to the status of the compressor station as soon as they are known.

Please contact your Operations Account Representative if you have any questions.

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TSP: 006951446
TSP Name: Algonquin Gas Transmission, LLC
Critical Notice Description: Critical notice
Notice Effective Date: 10/15/2020
Notice Effective Time: 09:00:00 AM
Notice End Date: 10/16/2020
Notice End Time: 09:00:00 AM
Notice Identifier: 101759
Notice Status Description: Initiate
Notice Type: Capacity Constraint
Posting Date: 10/14/2020
Posting Time: 03:40:08 PM
Prior Notice Identifier:
Required Response
Indicator Description: No response required
Response Date:
Response Time:
Subject: AGT Pipeline Conditions for 10/15/2020

Notice Text:

For Gas Day October 15, 2020, Algonquin Gas Transmission (AGT) has approved and scheduled nominations at each pipeline segment and meter station up to AGT's operational capacity. The following locations have been restricted due to requested nominations exceeding AGT's operational capacity:

Due to the ongoing Force Majeure, until further notice, AGT has restricted interruptible, secondary out of path, secondary in path and 100% primary firm nominations sourced upstream of the Weymouth Compressor Station (Weymouth) for delivery downstream of Weymouth. No increases in nominations sourced from points upstream Weymouth for delivery downstream of Weymouth will be accepted.

AGT has restricted 100% interruptible and approximately 86% secondary out of path nominations that exceed entitlements sourced from points west of its Stony Point Compressor Station (Stony Point) for delivery east of Stony Point. No increases in nominations sourced west of Stony Point for delivery east of Stony Point, except for Primary Firm No-Notice nominations, will be accepted.

AGT has restricted 100% interruptible and approximately 47% secondary out of path nominations that exceed entitlements sourced from points west of its Cromwell Compressor Station (Cromwell) for delivery east of Cromwell. No increases in nominations sourced west of Cromwell for delivery east of Cromwell, except for Primary Firm No-Notice nominations, will be accepted.

AGT has restricted 100% interruptible and approximately 62% secondary out of path nominations that exceed entitlements sourced from points west of its Burrillville Compressor Station (Burrillville) for delivery to points east of Burrillville. No increases in nominations sourced from points west of Burrillville for delivery to points east of Burrillville, except for Primary Firm No-Notice nominations, will be accepted.

AGT has restricted 100% of interruptible, secondary out of path nominations that exceed entitlements and 100% secondary out of path nominations within entitlements sourced upstream of the G system for delivery on the G system. No increases in nominations sourced upstream of the G system for delivery on the G, except for Primary Firm No-Notice nominations, will be accepted.

AGT has restricted 100% interruptible and approximately 61% out of path nominations exceeding receipt entitlements sourced at the Tennessee Gas Pipeline interconnect at Mendon (Meter station 00205). No increases in receipts to Mendon will be accepted.

AGT requires all delivery point operators to keep actual daily takes out of the system equal to or less than scheduled quantities regardless of their cumulative imbalance position unless otherwise coordinated with your operations account representative. All receipt point operators are required to keep actual daily receipts into the system equal to or greater than scheduled quantities regardless of their cumulative imbalance position unless otherwise coordinated with your operations account representative.

AGT requests that customers/point operators on AGT be aware of the impact non-ratable hourly takes from the system may have in causing delivery pressures reaching lower than desired levels.

As a reminder, AGT's system is not designed to sustain delivery pressures above contract levels while making non-ratable/accelerated deliveries above scheduled quantities for more than 6 consecutive hours, to be followed by flows below scheduled quantity for the balance of any 24-hour period. If customers/point operators don't manage hourly takes from the system, 1) delivery pressures will be impacted and /or 2) AGT may be required to impose further restrictions or courses of action in order to maintain the operational integrity of the system.

AGT may be required to issue system specific and/or hourly OFO's pursuant to General Terms and Conditions Section 26.7(d) to impose further restrictions in order to maintain the operational integrity of the system.

Additionally, AGT requires all Power Plant Operators to provide information mandated by FERC Order No. 698. Information required includes the hourly consumption profile of directly connected power generation facilities.

Customers are advised that capacity may become available as the nomination and confirmation process continues throughout the day.

Please contact your Operations Account Representative should you have any questions.

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16. **FORCE MAJEURE**

- 16.1 Relief from Liability. Neither party shall be taken to have breached its obligations under the service agreement, the applicable rate schedule, or these General Terms and Conditions by reason of any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, damage, breakage or accident to machinery or lines of pipe, failure of third-party transportation, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension under this section, which act, omission or circumstance such party is unable by the exercise of due diligence to prevent or overcome. For the sole purpose of calculating Reservation Charge Adjustments pursuant to Section 50 of these General Terms and Conditions, outages due to scheduled or routine maintenance shall not be considered *Force Majeure* events.
- 16.2 Liabilities Not Relieved. Such causes or contingencies affecting performance by either party, however, shall not relieve such party of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting performance relieve either party from its obligations to make payments of amounts then due in respect of gas theretofore delivered.
- 16.3 Proration of Impaired Deliveries. The provisions of Section 24 of these General Terms and Conditions shall govern the apportionment of available capacity when such available capacity is impaired so that Algonquin is unable to deliver to Customer the daily or annual quantities of gas provided by effective service agreements.
- 16.4 Scheduling of Construction and Maintenance. Algonquin shall have the right to curtail, interrupt, discontinue, or not schedule service in whole or in part on all or a portion of its system from time to time to perform repair, maintenance or improvements on Algonquin's system as necessary to maintain the operational capability of the system, or to comply with applicable regulatory requirements, or to perform construction pursuant to valid FERC authorization, except that Algonquin shall not have the right to curtail service that Customer has nominated and Algonquin has scheduled in order to perform routine repair or maintenance. Algonquin shall exercise due diligence to schedule repair, construction and maintenance so as to minimize disruptions of service to Customer and shall provide reasonable notice of the same to Customer.

- 16.5 Compliance with Directives of Governmental Agencies. Whenever in order to comply with orders, directives or regulations of duly constituted state, local or federal authorities, including, but not limited to, the Department of Transportation, the Federal Energy Regulatory Commission, and the Environmental Protection Agency, Algonquin must curtail deliveries to Customer and is unable to deliver to Customer the quantities of gas which Customer may then require up to the quantities of gas Algonquin is then obligated to deliver to Customer, Algonquin shall not be liable in damages or otherwise to Customer or any other person or entity for any such failure to deliver such quantities of gas to Customer except to the extent the orders or directives were issued as a result of imprudence or failure to exercise due diligence on the part of Algonquin.
- 16.6 Effect of Interconnecting Operations. In the event that any upstream entity involved in handling Customer's gas refuses or is unable to deliver gas to Algonquin, Algonquin shall not be required to continue deliveries of gas on behalf of Customer to the extent of such refusal or inability to deliver gas to Algonquin. In the event that any downstream entity involved in handling Customer's gas refuses or is unable to receive gas from Algonquin, Algonquin shall have the right to reduce deliveries of gas on behalf of Customer to the extent of such refusal or inability by the downstream entity to receive gas.

ATTACHMENT C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

JAN 15 2015

OFFICE OF
AIR, WASTE AND TOXICS

Mr. Buki Wright
President
Aurora Energy, LLC
100 Cushman Street, Suite 210
Fairbanks, Alaska 99701-4674

Dear Mr. Wright:

This letter is in response to a request received via email from David Fish, Environmental Manager at Aurora Energy, LLC (Aurora), on November 13, 2014, and information submitted November 19, and 20, 2014, from Aurora seeking an additional compliance extension for the performance testing deadline for three coal fired boilers (Emission Units (EUs) 4, 5, and 6) at the Chena Power Plant in Fairbanks, Alaska.

The Chena Power Plant is an area source facility with four coal-fired boilers (EUs 4, 5, 6, and 7) that are subject to the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Area Sources: Industrial, Commercial, and Institutional Boilers, 40 C.F.R. Part 63, Subpart JJJJJ (Subpart JJJJJ). All four boilers are existing sources and are subject to performance testing to demonstrate compliance. Based upon information provided by Aurora, the EPA determined, in a letter to Aurora dated September 26, 2014, (September 26, 2014, Determination) that the failure of the Chena Power Plant's turbine-generator #1 (TG #1) on April 28, 2014, constituted a *force majeure* event for EUs 4 through 6 and the EPA granted a compliance extension to the performance testing deadline for those units until November 17, 2014.

Aurora did not successfully conduct the Subpart JJJJJ performance test for EUs 4 through 6 by November 17, 2014 and has requested an additional extension until January 31, 2015. The November 17, 2014 testing deadline that the EPA granted was based upon information provided by Aurora and was the date Aurora requested. However, due to repair setbacks discussed further below, the November 17, 2014, deadline was not met. The repair setbacks were unavoidable and not the result of any action or inaction by Aurora.

The EPA has determined that an amendment to its September 26, 2014, Determination is warranted to provide additional time to make necessary repairs to TG#1 and enable a representative performance test to be conducted. The EPA has determined an additional 75 days beyond the original extension shall be sufficient to complete the repairs and install TG #1 and ensure that TG #1 can reach and maintain expected operational performance suitable for conducting the Subpart JJJJJ performance test. The EPA approves an extension of the



Subpart JJJJJ performance test requirement for EUs 4-6 until January 31, 2015.

Background

The EPA had determined that the soonest practicable date that Aurora's performance tests for EUs 4-6 could occur due to the *force majeure* event, would be when sufficient steam demand from the district heating load existed to operate the boilers in a representative way. As indicated by Aurora, such steam demand was thought to have been sufficient even if TG #1 was not installed and operational by that time. See September 26, 2014, Determination for an explanation of the basis of the EPA's decision.

In materials presented to the EPA as part of the original *force majeure* request, Aurora estimated that, under the best case scenario, TG #1 could be repaired, installed and operational by November 17, 2014. It was also estimated that a performance test on EUs 4-6 could be conducted that would be based on representative performance (i.e., performance based on normal operating conditions) of the affected sources as required by 40 C.F.R. §63.7(e), without TG #1 operational, relying on district heating demand and TG #2 alone. Aurora therefore requested that the EPA extend the performance test deadline, due to *force majeure*, until November 17, 2014, as the soonest practicable date that the performance test could occur.

During the week of November 10, 2014, TG #1 had yet to be repaired and Aurora attempted to complete the performance testing relying on demand from the district heating load and TG #2 to operate the boilers. Aurora stated that they found that even if the temperature in Fairbanks was low enough to generate a demand for heating load from the district heating, without the stable base load from TG #1, the fluctuating steam demand from district heating combined with the demand from TG #2 generated variable pressure at the header, which led to system instability. The system was not stable enough to conduct a representative test on the affected sources, EUs 4-6, and set ongoing monitoring parameters for Subpart JJJJJ according to the prescribed test methods and 40 CFR §63.7(e).

On November 12, 2014, David Fish informed the EPA that temperatures in Fairbanks were uncharacteristically warm, and they were having difficulties meeting the operational load for the test. On November 13, 2014, David Fish informed the EPA that Aurora had unsuccessfully attempted to conduct testing and they requested to postpone the testing until TG #1 was in operation and the temperatures were lower to generate sufficient district heating load.

Aurora has also provided the EPA with revised estimates of when TG #1 will be operational, based on additional setbacks in repairing this unit that occurred subsequent to their original request for a compliance extension based on a *force majeure*. In an email dated November 19, 2014, David Fish stated that Aurora was unable to have TG #1 fully operational by November 17, 2014, due to additional problems identified by National Electric Coil (NEC), their current contractor that is repairing the turbine-rotor. He stated that Aurora received

notice from NEC on September 30, 2014, that there were several retaining rings within the rotor which are critical to the operation that needed to be replaced. The completion date of the rotor repair including the installation of the rings and balancing of the rotor was changed from October 27, 2014, to November 27, 2014. Information provided in an email from David Fish dated December 8, 2014, confirmed that TG #1 was repaired and en route to the facility. Further information provided in an email from David Fish dated December 17, 2014, stated TG #1 arrived on site the week of December 8, 2014, and it had been installed but was not operational yet. Additionally, it was discovered some bearing seals were missing and the seals must be manufactured. Aurora anticipated the seals would be delivered by December 27, 2014.

Information provided in an email from David Fish dated January 2, 2015, confirmed that the bearing seals for the turbine-generator were manufactured and installed. According to Aurora, TG #1 was operational at low load on January 1, 2015 and they are addressing control issues before operating TG #1 at full load. Aurora anticipates TG #1 should be operating at a full load by the end of January 2015. Aurora therefore requests an extension of the performance test deadline to the end of January 2015.

Determination

The EPA has determined that an amendment to the September 26, 2014, Determination is warranted to ensure that a representative performance test is conducted for Aurora's EUs 4-6. The EPA concludes, based on the new information provided by Aurora, that it is infeasible to conduct the performance tests on EUs 4-6 through reliance on steam load from just district heating demands and TG #2. The EPA additionally concludes that Aurora is making good faith efforts to repair TG #1 expeditiously and that the soonest practicable date that the performance test can occur is when the repairs to TG #1 are complete and TG #1 is installed and operational. The EPA has determined that extending the Subpart JJJJJ performance test deadline until January 31, 2015, will provide for time to complete the repair and installation and ensure that TG #1 is fully operational and the test can be conducted according to the requirements of Subpart JJJJJ and 40 CFR §63.7.

If you have any questions regarding this extension, please contact Heather Valdez at (206) 553-6220.

Sincerely,

A handwritten signature in black ink, appearing to read "Wenona Wilson", with a long horizontal flourish extending to the right.

Wenona Wilson, Manager
Tribal and Air Toxics Unit

cc: James Baumgartner,
Alaska Department of Environmental Conservation

Moses Coss,
Alaska Department of Environmental Conservation

ATTACHMENT D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

SEP 26 2014

OFFICE OF
AIR, WASTE AND TOXICS

Mr. Buki Wright
President
Aurora Energy, LLC
100 Cushman Street, Suite 210
Fairbanks, Alaska 99701-4674

Dear Mr. Wright:

This letter is in response to the September 9, 2014, request from Aurora Energy, LLC (Aurora) for an extension of the initial performance test deadline for three coal fired boilers (Emission Units (EUs) 4, 5, and 6) at the Chena Power Plant in Fairbanks, Alaska. In requesting a test deadline extension, Aurora asserted a claim of *force majeure*. Based on the information provided, the U.S. Environmental Protection Agency (EPA) has concluded that a *force majeure* event, as defined in 40 C.F.R. Part 63, Subpart A, has occurred and that an extension of the performance test deadline under the applicable federal standard, for 60 days, to November 17, 2014, is appropriate as further described below.

Background

The Chena Power Plant is an area source facility with four coal-fired boilers (EUs 4, 5, 6, and 7) that are subject to the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Area Sources: Industrial, Commercial, and Institutional Boilers, 40 C.F.R. Part 63, Subpart JJJJJ (Subpart JJJJJ). All four boilers are existing sources and are subject to performance testing to demonstrate compliance by September 17, 2014 (within 180 days after the initial compliance date specified in 40 C.F.R. § 63.11196).

Pursuant to the Notification of Intent dated May 1, 2014, Aurora planned to conduct source testing on each of the four boilers during the week of July 21, 2014. Source Testing on EU7 demonstrated compliance with the standard, and operational parameters per the requirements of Subpart JJJJJ for that unit have been established. To date, Aurora has not conducted performance testing for EUs 4-6. Aurora has stated that a *force majeure* event occurred preventing the testing from being timely conducted and has provided information indicating that due to a mechanical failure at the facility's Turbine Generator #1 (TG #1) on April 28, 2014, the turbine generator was rendered inoperable.

According to the general provisions (40 C.F.R. Part 63, Subpart A) for sources subject to a NESHAP regulation, a source owner or operator may petition the EPA for an extension of a performance test deadline caused by delays attributable to a *force majeure*, as defined in the

regulations, provided certain other requirements are met¹. See 40 C.F.R §§ 63.2 (definition of force majeure) and 63.7(a)(4). Aurora requested a 60-day extension of the performance test deadline (to November 17, 2014) for EUs 4, 5, and 6, based on the *force majeure* provision.

Aurora notified the EPA of its request for an extension of its compliance test deadline prior to the testing deadline, with an explanation of the factual circumstances surrounding the failure of TG #1 and its inability to conduct the compliance test on EUs 4-6. Aurora contacted EPA for guidance shortly after TG #1 failed. Aurora has remained in contact with EPA and has provided regular updates on the company's efforts to complete the performance test by the regulatory deadline.

EUs 4-6 are each rated at 50,000 lbs/hr steam and are jointly connected to district heating and two turbine-generators, a 2 MW unit (TG #2) and a 5 MW unit (TG #1). In order to perform a representative stack test on EUs 4-6, sufficient steam load on the boilers is required to run a typical operating configuration. Either the condensing turbines or district heating generate the necessary load on the boilers for testing. During the non-winter months, the district heating load is minimal and Aurora is reliant on the load generated by both the turbine generators.

Force Majeure Event

On April 28, 2014, Aurora first discovered a problem with the operation of TG #1 when a high vibration alarm forced personnel to take the unit offline. The outer housing of the generator was removed and the balance weight was noted as having pierced through the inner housing. Investigation of the cause of the breakdown was determined to be the failure of a bolt in the turbine's rotor which had secured a balance weight. The bolt was a standard stock part provided by the manufacture. To Aurora's knowledge, that bolt had not been replaced throughout the life of the turbine-generator and the bolt is a part that is not typically replaced. There were no external influences identified which could have caused the bolt to fail. It had been in place for many years and there were no indications, from former and recent overhauls, that the bolt would break. From the information provided by Aurora, there is no indication that any action (or inaction) by Aurora or its contractors led to the bolt failure.

Attempts to Timely Address Force Majeure Event

Based upon the information provided by Aurora, the company made good faith efforts to correct the mechanical problems caused by the bolt failure (the force majeure event) and test by the regulatory deadline, as described below.

On May 5, 2014, Aurora signed a purchase order to initiate an attempt to repair the rotor. Aurora hired the contractor for the repair after the company that had the contract to overhaul

¹ Alaska does not have CAA delegation of this extension provision.

TG #1 recommended them for the repair work. The turbine repair contractor chosen by Aurora for the repair work had performed work for Aurora in the past and both the overhaul and the repair contractors had worked together on several other power plants in Alaska. The contractor for the repair also has a reputation as a qualified contractor with almost 20 years of service and is accredited by the Better Business Bureau with an A+ rating. This gave Aurora reason to believe that the contractor they hired for the repair had sufficient experience in repairing the type of turbine-generator maintained at Aurora.

On May 21, 2014, Aurora first contacted EPA to discuss the issue and explore compliance options. There were a series of communications between Aurora and EPA throughout June.

On August 13, 2014, Aurora believed the repair was completed and performed a test spin on TG #1.

On August 15, 2014, due to high vibration in the bearing, Aurora took the turbine offline and contacted the contractors to investigate the problem. The repair was determined to be inadequate, and Aurora initiated a search for a replacement rotor. On this date, Aurora was still hopeful that TG #1 would be available by the test deadline and scheduled a performance test for September 16, 2014 (rescheduled from the initial testing date for the week of July 21, 2014).

On September 8, 2014, an offsite inspection of the rotor concluded that the repairs needed to rebuild the rotor would take at least 12 weeks. It would also take at least that long to obtain a replacement. Aurora contacted the EPA that day requesting guidance on the *force majeure* provisions due to the inability to complete the tests that had been re-scheduled for September 16, 2014. The EPA received the *force majeure* request the next day, September 9, 2014.

According to the information provided by Aurora, it is necessary during the non-winter months to run EUs 4-6 together with at least two operating boilers, to maintain a steady load of steam from the boilers. Operating one boiler could result in highly variable emissions readings that would not be representative of typical operations. The steam load from TG #2 combined with the non-winter district heat load does not provide enough load to run at least two boilers to conduct a performance test under representative conditions.

Aurora requested a 60 day extension from the compliance date, to November 17, 2014. Aurora anticipates that within that time frame, either the TG #1 repairs will be complete and the turbine operational, or the weather-related winter district heating load average (in combination with the steam load from TG #2) will be sufficient for EUs 4-6 to perform a representative performance test. In October 2013, the average daily district heating load was 820,000 lbs of steam/day; in November 2013, the average daily district heating load was 1,400,000 lbs of steam/day. Aurora will continue taking the necessary steps to repair TG #1 and return the turbine to operation as expeditiously as possible. These efforts include repairing or potentially re-building the turbine's rotor. Provided that TG #1 is not online by

mid-November, the steam load for district heating and the steam load for TG #2 (20,000 lbs/hr) would be sufficient to allow Aurora to operate normally with two boilers at 39,000 lbs of steam/hr. At that load, a representative source test of Aurora's three small boilers, EUs 4-6 can be conducted successfully.

Determination

The regulation at 40 C.F.R § 63.2 defines a force majeure as:

An event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

In responding to comments regarding the scope of this extension provision, the EPA stated that the focus of the rule and the definition of force majeure is an event beyond the control of the affected facility and pointed to dictionary definitions defining the term as "an event or effect that cannot be reasonably anticipated or controlled." 72 Fed. Reg. 27437, 27438 (May 16, 2007). Although equipment failures may qualify as a force majeure event depending upon the particular circumstances and requests for an extension based upon such an event are reviewed on a case-by-case basis, such failures must be beyond the control of the affected facility and its contractors.

After consideration of the information submitted by Aurora, the EPA has determined that the failure of TG #1 resulting from a broken bolt and dislodging of a balance weight, constitutes a *force majeure* event within the meaning of the NESHAP regulations. The operation of TG #1 is necessary to conduct a representative performance test of the three smaller boilers, EUs 4-6, during non-winter months. The EPA has determined that the mechanical failure of TG #1 could not have been prevented and was not caused by Aurora or any of its contractors.

The request letter and supporting documentation submitted by Aurora provided timely notice, described the claimed force majeure event, explained why the event prevents Aurora from meeting the performance test deadline, described the measures being taken to minimize the delay, and identified a proposed date for conducting the testing. Therefore, EPA has determined that it is appropriate to approve the request and grant an extension to the performance test deadline.

EPA has further determined that because the boilers are currently not operating in a representative manner due to inadequate steam load, it is appropriate that the performance test deadline be extended 60 days to November 17, 2014. Based on the information provided,

the load from district heating will have sufficiently increased by November 17 and, thus, this date is the earliest practicable date by which the performance test may be completed under representative conditions.

If you have any questions regarding this extension, please contact Heather Valdez at (206) 553-6220.

Sincerely,

A handwritten signature in black ink, appearing to read "Wenona Wilson", with a long horizontal flourish extending to the right.

Wenona Wilson, Manager
Tribal and Air Toxics Unit

cc: James Baumgartner,
Alaska Department of Environmental Conservation

Moses Coss,
Alaska Department of Environmental Conservation

ATTACHMENT E



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

APR 25 2014

OFFICE OF
AIR, WASTE AND TOXICS

Mr. Yoshifumi Nagaura
President
Nippon Paper Industries USA Co., LTD.
1815 Marine Drive
Port Angeles, Washington 98363

Dear Mr. Nagaura:

This letter is in response to the March 12, 2014, request and the supplemental information provided by letters dated March 28, 2014 and April 22, 2014, from Nippon Paper Industries USA Co., Ltd. (NPIUSA) for an extension of the initial performance test deadline for a new biomass-fired cogeneration boiler (boiler) at the NPIUSA facility in Port Angeles, Washington. Based on the information provided, the U.S. Environmental Protection Agency (EPA) has concluded that a force majeure event, as defined in 40 C.F.R. Part 60, Subpart A and 40 CFR Part 63, Subpart A, has occurred and that an extension of the performance test deadline under the applicable federal standards is appropriate as further described below.¹

Background

The boiler is subject to the Clean Air Act (CAA) Standards of Performance for New Stationary Sources (NSPS), Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. Part 60, Subpart Db (NSPS Subpart Db) and the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 40 C.F.R. Part 63, Subpart DDDDD (NESHAP Subpart DDDDD). Initial performance testing for new sources is required under NSPS Subpart Db within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility. 40 C.F.R. § 60.7(a). Under NESHAP Subpart DDDDD, initial performance testing for new sources is required no later than July 30, 2013 or within 180 days after startup of the source, whichever is later. 40 C.F.R. §§ 63.7(a); 63.7510(e). In this case, initial startup of the boiler occurred on October 31, 2013. Accordingly, the performance tests required by the NSPS and NESHAP are required to be conducted by April 29, 2014 (within 180 days after initial startup).

¹ NPIUSA's letters also request extensions of performance testing and other deadlines contained in Order of Approval, Notice of Construction 10NOC763 issued by the Olympic Region Clean Air Agency (ORCAA) to NPIUSA that also apply to the boiler. This letter only addresses NPIUSA's request for extension of the performance test deadlines under the applicable federal NSPS and NESHAP as discussed in this letter.

Under both the NSPS and NESHAP, a source owner or operator may petition the EPA for an extension of a performance test deadline caused by delays attributable to a force majeure, as defined in the regulations, provided certain other requirements are met.² See 40 C.F.R. §§ 60.2 (definition of force majeure); 60.8(a)(1), (a)(2), (a)(3), and (a)(4); 63.2 (definition of force majeure); 60.7(a)(4)(i), (a)(4)(ii), and (a)(4)(iii). As discussed above, NPIUSA submitted letters to the EPA dated March 12, March 28, and April 22, 2014, including supporting documentation, requesting an extension of the performance test deadline based on these force majeure provisions.

The submitted information shows that during checks conducted on March 10-12, 2014, prior to restarting the boiler after a February 18, 2014 shutdown, hydrostatic testing led to the discovery of first one and then many more cracks in the mud drum of the boiler. Despite subsequent inspections of the cracks and extensive testing and analysis by metallurgical and other experts, the submitted information indicates that the cause of the cracks and the resulting failure of the mud drum has not been determined. Options to address the problem range from special welding repairs to the drum and replacing boiler tubes, to the complete removal and replacement of the mud drum and tubes. Until the mud drum is either repaired or replaced, the boiler cannot operate and therefore cannot be tested. In its most recent letter dated April 22, 2014, NPIUSA requests that a new performance testing deadline be set at the earliest date after restart of the boiler on which it is practicable for NPIUSA to conduct performance testing, but no later than 180 days after the day that the boiler on restart delivers steam to the mill.

Determination

The NSPS and NESHAP regulations define a force majeure as:

An event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

40 C.F.R. §§ 60.2 and 63.2. In responding to comments that the scope of this extension provision was too narrow, the EPA stated that the focus of the rule and the definition of force majeure is an event beyond the control of the affected facility and pointed to dictionary definitions defining the term as "an event or effect that cannot be reasonably anticipated or controlled." 72 Fed. Reg. 27437, 27438 (May 16, 2007). Although equipment failures may qualify as a force majeure event depending upon the particular circumstances and requests for an extension based upon such an event are reviewed on a case-by-case basis, such failures must be beyond the control of the affected facility.

² Neither ORCAA nor the Washington Department of Ecology has CAA delegation of these extension provisions.



After consideration of the information submitted by NPIUSA to the EPA, the Agency has determined that the cracks in the mud drum resulting in the boiler outage constitutes a force majeure within the meaning of the NSPS and NESHAP regulations.³ Despite more than a month of intensive testing and investigation by experts in the field and in laboratories, a definitive cause of the cracks and resulting failure of the mud drum has not been identified. Because the boiler cannot be operated until the mud drum is repaired or replaced, the EPA has determined, based upon the information provided by NPIUSA, that the inability to meet the performance test deadline was caused by circumstances beyond the control of NPIUSA, its contractors, or any entity controlled by NPIUSA and therefore constitutes a force majeure as defined in 40 C.F.R. §§ 60.2 and 63.2. The letters and supporting documentation submitted by NPIUSA provided timely notice, described the claimed force majeure event and why the event prevents NPIUSA from meeting the deadline for conducting the performance testing, what measures are being taken to minimize the delay, and NPIUSA's proposed date for conducting the testing. The EPA therefore believes it is appropriate to extend the performance test deadline.

As discussed above, NPIUSA has requested that the performance test deadline be extended until the earliest date after restart of the boiler on which it is practicable for NPIUSA to conduct performance testing, but no later than 180 days after the day that the boiler on restart delivers steam to the mill. The EPA agrees that, because the boiler is currently not operating and it is unclear when repairs of the boiler will be completed, it is appropriate that the performance test deadline be extended based on when operation of the boiler resumes. The applicable NSPS and NESHAP, however, define startup of the boiler as when the boiler is "set[] in operation...for any purpose" (see 40 C.F.R. §§ 60.2 and 63.2), and not when the boiler first delivers steam to a related operation. The EPA therefore is establishing the revised performance test deadline based on the date of "startup" of the boiler, as defined in the NSPS and NESHAP.

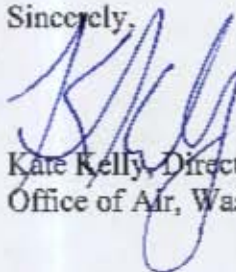
In addition, the EPA does not believe the full 180 days after startup of the boiler as requested by NPIUSA is needed to ready the boiler for the required performance testing. NPIUSA's March 12, 2014, letter sets out a time-frame for steps needed prior to performance testing. Moreover, the boiler did operate intermittently from October 31, 1993 until February 18, 2014, during which time some "shake down" of the boiler components occurred. Based on this information, the EPA is requiring that the performance tests be conducted as soon as practicable after startup of the boiler, but not later than 150 days after startup.⁴

³ NPIUSA's March 12 and 28, 2014 letters either state or imply that the EPA has authority to extend performance test deadlines in the NSPS and NESHAP for reasons other than a demonstration of a force majeure, as defined in the NSPS and NESHAP. The EPA disagrees with any such contention. In proposing and finalizing the force majeure extension provisions, the EPA expressly declined to affirm that it had existing authority to approve requests for extension of performance test deadlines under the then existing NSPS and NESHAP regulations. See 72 Fed. Reg. 27437, 27439 (May 16, 2007) (final rule); 71 Fed. Reg. 45487, 45489 (August 9, 2006) (proposed rule).

⁴ See 40 C.F.R. §§608(a)(3) and 63.7(a)(4)(iii)

If you have any questions regarding this extension, please contact Heather Valdez of my staff at (206) 553-6220.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K Kelly', is written over the printed name and title.

Kate Kelly, Director
Office of Air, Waste and Toxics

cc: Fran McNair
Director, Olympic Region Clean Air Agency



ATTACHMENT F



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: M080005

Category: MACT
EPA Office: Region 5
Date: 12/06/2007
Title: Force Majeure Events Delaying Initial Performance Testing for an Iron and Steel Foundry
Recipient: Fitzgerald, Douglas
Author: Czerniak, George
Comments:

Part 63, EEEEE Iron and Steel Foundries

References: 63.7(a)
63.7683
63.7730

Abstract:

Q: Does EPA consider, as force majeure, certain furnace malfunctions and labor strikes that prevented stack tests from being conducted before the compliance deadline under 40 CFR part 63, subpart EEEEE, at the Indianapolis Casting facility in Indianapolis, Indiana?

A: Yes. EPA finds that the certain events, such as furnace malfunctions and labor strikes, as described in EPA's response to Indianapolis Casting, can be considered as force majeure under MACT subpart A. The furnace malfunctions were safety related and required extended furnace shut downs for repair, and labor actions are beyond the control of the company.

Letter:

12/06/2007

Douglas S. Fitzgerald
Environmental Engineer
Indianapolis Casting Corporation
5565 Brookville Road
Indianapolis, Indiana 46219

Dear Mr. Fitzgerald:

The U.S. Environmental Protection Agency (EPA) is in receipt of your October 2 and November 7, 2007 letters requesting approval of extension of a deadline for performance testing on two foundry processes due to recent force majeure events. The EPA has reviewed the matter, and has concluded that, based on the information supplied in your letters, force majeure events had occurred as defined by the general provisions at 40 CFR Part 63, Subpart A, and that an extension of the deadline for testing is appropriate.

The specific processes affected are the Phase 1 melting process ("EU-F04"), the Loramendi Cold Box

Core Machine ("EU-28A"), and the M-1 Pouring Line ("EU-F08"). These processes are subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Iron and Steel Foundries, published at 40 CFR Part 63, Subpart EEEEE. The compliance date established by the NESHAP at 40 CFR Sec. 63.7683 is April 23, 2007. The testing is therefore required by October 20, 2007.

Your first letter describes prior attempts to test the EU-F04 process on August 20-24 and September 24-25, 2007. On both occasions, water leaks occurred on Furnace 3 of the process just prior to the scheduled tests. We understand that the water leaks posed a significant safety hazard that required the furnace to be taken out of service for a week or more for repairs. In addition, the plant was idled from October 1 to October 20, 2007 due to events affecting production at Ford Motor Company's Kentucky Truck Plant, which uses foundry parts produced at your Indianapolis foundry. You described how you were unable to re-schedule a test prior to October 1, 2007 when the decision was made to idle the plant. Still, you believed the processes could be tested as soon as practicable after the October 20, 2007, regulatory deadline. The EU-F08 process was not tested primarily due to scheduling issues associated with the test firm's availability, the 60-day requirement to notify EPA of the testing, and again, the unexpected Ford Motor Company plant shutdown.

Your second letter describes how the United Auto Workers imposed a labor strike on October 23 at the foundry, making full production required for testing purposes to be virtually impossible. It is our understanding that this strike is ongoing.

Additionally, in another letter dated September 12, 2007, you requested that we accept the April 2005 testing for the M-1 Pouring Line as adequate for purposes of the initial compliance demonstration required at 40 CFR Sec. 63.7730. In a separate response letter, EPA denied this request due to inadequate sample volume. We note, however, that in your August 13, 2007 intent to test notification, you had scheduled this testing during the week of October 15, 2007 in the event that the April 2005 testing is not acceptable to EPA. The schedule for this testing was also impacted by the labor strike.

In conclusion, Indianapolis Casting Corporation faced force majeure events that prevented timely testing as described above. Nevertheless, you must notify the Administrator as soon as practicable and without delay when you are able to re-schedule the performance tests, and you must specify the date when the tests are rescheduled, as required at 40 CFR Sec. 63.7(a).

If you have any questions regarding this letter, please contact Jeffrey Gahris, of my staff, at (312) 886-6794.

Sincerely,

George T. Czerniak, Chief
Air Enforcement and Compliance Assurance Branch

cc: Brian Sandstrom
City of Indianapolis Environmental Services

Steve Friend
Indiana Department of Environment